PUBLIC PROSECUTOR

v.

MUHAMMAD SITUL SAHRI & ANOTHER CASE

HIGH COURT MALAYA, KUALA LUMPUR
MOHD. AZMI J
[CRIMINAL APPEAL NOS. 66 & 68 OF 1981]
10 JULY 1981

ROAD TRAFFIC: *Driving without due care and attention - Section 36(1) - Mandatory endorsement - Driving licence - Special reason - Not to order endorsement - Section 36(2) R.T.O.*

This is an appeal by the Public Prosecutor in respect of two separate cases against the decision of the Magistrate for failing to endorse the respondents' driving licence after they had pleaded guilty to driving their vehicles without due care and attention, an offence punishable under s. 36(1) of the Road Traffic Ordinance 1958.

The learned Magistrate did not order the endorsement in both the cases under s. 36(1) of the Road Traffic Ordinance 1958 as he found special reasons under s. 36(2) and exercised his discretion not to do so.

Held:
[1] None of the facts taken into consideration by the learned Magistrate could constitute a special reason in law.

[2] The fact that the respondents were first offenders or had been driving for years with a clean record, or that they were holders of provisional driving licence were facts of general character, and even if they were of special character, they were mainly special to the respondents and not facts special to the offence.

[Appeals Allowed.]

Cases referred to:
R. v. Crossan [1939] NI 106
Whittall v. Kirby [1947] 1 KB 194
Re Kanapathipillai & Ors. [1960] MLJ 243

Legislation referred to:
Road Traffic Ordinance 1958, ss. 36(1), (2)

For the appellant in FTCA No. 66 of 1981 - Gooi Soon Seng, DPP
For the appellant in FTCA No. 68 of 1981 - Phang Ah Hee, DPP
For the respondents in FTCA No. 66 of 1981 and FTCA No. 68 of 1981 - in person.

JUDGMENT

Mohd. Azmi J:

I have allowed both these appeals and I now proceed to give my reasons.

In these two cases, the Public Prosecutor had appealed against the decision of the Magistrate for failing to endorse the respondents' driving licence after they had pleaded guilty to driving their vehicles without due care and attention, an offence punishable under s. 36(1) of the Road Traffic Ordinance 1958.

In the first case, the respondent, Muhammed Situl bin Sahri, whilst overtaking a motor car collided into an oncoming motorcycle at Jalan Sentul, Kuala Lumpur, on 14 March 1980, at about 2.20 p.m. Whilst in the second case, the respondent, Chew Ah Bah, collided into the rear of another vehicle at Syed Putra Roundabout also at Kuala Lumpur on 24 February 1980, at about 6.45 p.m. In both cases, it would appear that the learned Magistrate had found some difficulties in interpreting the meaning of "special reason" found in s. 36(2) of the Road Traffic Ordinance which provides:

> The Court shall (unless for any special reason it thinks fit to order otherwise) order particulars of any conviction under this section to be endorsed on any driving licence held by the person convicted.

What s. 36(2) means is that the Court has no discretion not to order endorsement unless there is special reason. It was Lord Goddard who first suggested in his address to Magistrates assembled at the Summer Assizes for Essex in 1937, that the reasons must be special to the offence and not to the offender. This suggestion was adopted by the King's Bench Division of Northern Ireland in *R. v. Crossan* [1939] NI 106. Subsequently, in delivering the judgment of the Court of Criminal Appeal in *Whittall v. Kirby* [1947] 1 KB 194, the following test applied in *R. v. Crossan* was adopted by Lord Goddard in determining what in law amounted to a special reason:

> A 'special reason' within the exception is one which is special to the facts of the particular case, that is, special to the facts which constitute the offence. It is, in other words, a mitigating or extenuating circumstance, not amounting in law to a offence to the charge, yet directly connected with the commission of the offence, and one which the Court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinguished from the offence is not a 'special reason' within the exception.

The principle enunciated in *Whitiall v. Kirby* had been applied locally in *Re Kanapathipillai & Ors.* [1960] MLJ 243 a case which all Magistrates are well advised to be familiar with. The law pertaining, to endorsement of driving licence under s. 36(2) Road Traffic Ordinance appears to be this. When a person is convicted under s. 36(1), it is mandatory to order endorsement, but the Court has a discretion to order otherwise if there is a special reason as opposed to a reason of general character. Further, the reason must be special to the offence, that is, special to the facts which constitute the offence, and not special to the offender.

In the present appeals, in refusing to order endorsement, the learned Magistrate had accepted the following facts as constituting "special reasons":

(a) respondent was a first offender;

(b) respondent was holding a provisional driving licence;

(c) that the accident was caused by an error in the respondents judgment of his distance from the oncoming motorcycle at the time of overtaking.

In the second case, the learned Magistrate had held the following factors as "special reasons":

(a) the respondent had been driving for the past ten years with a clean record;

(b) the accident took place at a busy roundabout;

(c) the main cause of the accident was the temporary lapse of attention by the respondent coupled with his eagerness to stay clear of traffic coming from the right.

It seems clear that none of the facts taken into consideration by the learned Magistrate could constitute a special reason in law. The fact that the respondents were first offenders or had been driving for years with a clean record, or that they were holders of provisional driving licence were facts of general character, and, even if they were of special character, they were merely special to the respondents and not facts special to the offence. Similarly, there was nothing special in the fact that respondent Muhammad Situl had committed an error of judgment when he overtook the other vehicle. Nor was there anything special in respondent Chew Ah Bah's temporary lapse of attention when he collided into the rear of another vehicle at a busy roundabout. Although an error of judgment or temporary lapse of attention had reference to the offence with which the respondents were charged they were generally the most common cause of traffic accidents and they usually formed the basis for the offence of driving without due care and attention and, as such, they could not constitute special reasons within the meaning of s. 36(2) Road Traffic Ordinance. In the circumstances, I allowed the appeals and ordered the driving licence of both respondents to be endorsed.

Also found at [1981] CLJ 44